BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

ALICE BRADFORD	)	
Claimant	)	
VS.	)	
	)	Docket No. 256,803
PIONEER BALLOON	)	
Respondent	)	
AND	)	
	)	
WAUSAU UNDERWRITERS	)	
Insurance Carrier	)	

ORDER

Respondent appeals Administrative Law Judge Jon L. Frobish's November 2, 2000, preliminary hearing Order.

ISSUES

The ALJ granted claimant's request for temporary total disability benefits and authorized medical treatment through orthopedic surgeon Robert L. Eyster, M.D.

On appeal, respondent contends claimant failed to prove her low back condition and current need for medical treatment are the result of an accidental injury that arose out of and in the course of claimant's employment with respondent. Respondent further argues that claimant's current need for medical treatment is, instead, the result of a degenerative arthritic disease process unrelated to her employment.

Conversely, claimant contends she has proven, through her testimony and the medical evidence admitted into the preliminary hearing record, that her work activities permanently aggravated her preexisting degenerative arthritic low back condition.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the parties' briefs, the Appeals Board finds the ALJ's preliminary hearing Order should be affirmed.

Claimant has a history of low back problems dating back to the late 1980s. Additionally, claimant fell and twisted her back in a parking lot in 1990, fell in her backyard

and twisted her back in 1991, hurt her back in 1993 lifting a dog, and fell at home injuring her back in 1995. Claimant was treated for those low back injuries through her family physician, R. M. Varner, D.O., and her family chiropractor, Dr. Merv D. McCormac. In fact, Dr. McCormac's chiropractic records were admitted into the preliminary hearing record and indicate claimant received treatment for low back pain on a monthly or bi-monthly basis after the 1995 fall through July 2000. Dr. Varner's medical records also were admitted into evidence and indicate that he saw claimant as far back as November 11, 1994, for back pain. At that time, Dr. Varner's diagnosis was lumbar radiculopathy with degenerative disk disease.

Before claimant started working for respondent, on October 7, 1997, she completed a pre-employment physical examination conducted by respondent's physician, Phillip S. Olsen, M.D. Claimant gave Dr. Olsen a history of back pain, a 1992 low back strain, and a diagnosis of a preexisting arthritic low back condition. After the physical examination, Dr. Olsen's conclusion was a normal industrial examination.

Claimant first worked for respondent as a production auditor. This job required claimant to work at a table where balloons were brought and stacked on the table. Claimant's job was to weigh the balloons, check for any flaws, pack the balloons into a box, label the box, and put the box on a skid. The production auditor job did not bother claimant's preexisting low back condition.

But in November and December 1999, for two weeks in each of those months, claimant had to perform the pulling balloon job. Claimant was again required for a month and a half in February and March 2000 to perform the pulling balloon job. That job did make claimant's low back pain worse. Claimant was required to sit in a chair, lean forward, and repetitively pull balloons off a moving conveyor belt. The balloons were laid on her lap until she accumulated 50 balloons and then the balloons were stacked on the table, a rubber band was placed around the balloons, and the stack of balloons was placed in a box until 500 were accumulated. After the box was full, claimant had to twist around for another box to place on top of the full box and then again start filling that box with balloons. Claimant had increased back pain every time she had to perform the pulling balloon job. While she was doing that job in February, claimant also had pain that started radiating down her left leg. Claimant had previously had some right leg pain but never left leg pain.

Finally, on either March 27 or March 28, 2000, claimant's pain and discomfort was so severe that she had to leave work before her shift was completed. Claimant sought relief from the pain through her chiropractor, Dr. McCormac. In a March 29, 2000, note, admitted into the preliminary hearing record, Dr. McCormac restricted claimant from any job requiring her to bend at the waist and using pulling motions.

As a result of this restriction, respondent moved claimant to a job entitled auto bag. The auto bag job was physically easier, but claimant continued to have low back pain.

Finally, claimant saw her family physician, Dr. Varner, on April 5, 2000. Dr. Varner had also seen claimant for a 1993 low back injury.

Dr. Varner had claimant undergo an MRI examination that was compared to an MRI examination completed on March 4, 1993. The radiologist's impression was marked central stenosis at the L5-S1 level, diffuse bulging of the disc in association with a Grade II spondylolisthesis of L5 on S1. At the L4-L5 level, there was mild to moderate central stenosis and a mildly bulging disc. Findings at both levels were progressive compared to the March 4, 1993, MRI examination. Dr. Varner's diagnosis was lumbar disc disease and spondylolisthesis. He prescribed cortisone injections and anti-inflammatory medications. Because claimant did not improve, Dr. Varner referred claimant to orthopedic surgeon Robert L. Eyster, M.D.

Dr. Eyster saw claimant on July 28, 2000. After conducting a physical examination of claimant, Dr. Eyster diagnosed claimant with spondylolisthesis with spinal stenosis at the L5-S1 level. The doctor explained to claimant the surgical option of decompression of the nerve root and a fusion at L5-S1 to limit the amount of forward migration of the L5 vertebra. At that time, claimant elected to proceed with the surgery.

After claimant testified at the August 29, 2000, preliminary hearing, the ALJ ordered claimant to undergo an independent medical examination. On October 12, 2000, claimant was examined and evaluated by orthopedic surgeon C. Reiff Brown, M.D. Dr. Brown had the benefit of claimant's previous medical treatment records from Drs. Varner, Giesler, McCormac, and Eyster, plus various radiology reports. After taking a history from claimant and conducting a physical examination, Dr. Brown diagnosed claimant with severe spinal stenosis, degenerative arthritis and spondylolisthesis at L4-5. He recommended claimant undergo the surgery prescribed by Dr. Eyster for the decompression and fusion at L4-5 and L5-S1.

Drs. McCormac, Varner, Eyster, and Brown all expressed the opinion that claimant's preexisting low back degenerative condition was aggravated and made worse by claimant's work activities while she was employed by the respondent.

In a workers compensation case, it has long been established that where a preexisting condition has been aggravated or accelerated by a worker's usual work tasks, the resulting injury is compensable.[1] The Appeals Board finds that claimant's testimony, coupled with the medical opinions of Drs. Varner, McCormac, Eyster, and Brown, is persuasive that claimant's preexisting degenerative low back condition was permanently aggravated and made worse because of claimant's work activities while she was employed by the respondent.

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[1] *See Claphan v. Great Bend Manor*, 5 Kan. App. 2d 47, 49, 611 P.2d 180, *rev. denied* 228 Kan. 806 (1980).

The Appeals Board disagrees with the respondent's contention that claimant's chronic preexisting degenerative low back condition was the cause of claimant not being able to work and the need for medical treatment. The Appeals Board also disagrees with respondent's argument that Dr. Brown's causation opinion should not be considered because claimant's description of the pulling balloon job duties was inaccurate. The Appeals Board finds the job duty description contained in Dr. Brown's report was not entirely accurate. But the Appeals Board concludes the job description contained sufficient job duties for Dr. Brown to form the opinion that the job aggravated claimant's preexisting low back condition. Therefore, the Appeals Board did consider Dr. Brown's medical opinion on causation and gave his opinion equal weight in determining the causation issue.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Jon L. Frobish's November 2, 2000, preliminary hearing Order should be, and the same is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of December 2000.

BOARD MEMBER

c: Jan L. Fisher, Topeka, KS
Christopher J. McCurdy, Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director